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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

CARRIE FERRARA CLARK,

Plaintiff,

vs.

CITY OF TUCSON,

Defendant.

4:14-cv-02543

**ANSWER TO SECOND AMENDED
COMPLAINT**

(Hon. Cindy Jorgenson)

Defendant City of Tucson answers Plaintiff’s Second Amended Complaint as follows (each numbered answer corresponds with Plaintiff’s paragraphs):

PARTIES, JURISDICTION AND VENUE

1. Upon information and belief, admits Plaintiff is a resident of Pima County, Arizona.
2. Admits that the City of Tucson is an incorporated municipality situated in Pima County.
3. Admits and alleges Defendant City of Tucson complied with the provisions set forth in the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, 42 U.S.C. §§ 2000e *et seq.* (Title VII), and the Arizona Civil Rights Act (ACRA), A.R.S. § 41-1461(6)(a).
4. Admits.
5. Admits.

1 6. Admits.

2 7. Denies and alleges Defendant is not liable to Plaintiff for any cause of action
3 alleged in her Second Amended Complaint and Defendant did not cause Plaintiff to suffer
4 any injuries or damages.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 8. Admits that on or about July 31, 2013, Plaintiff filed a written charge of sex
7 discrimination with the Arizona Attorney General's Office, Civil Rights Division,
8 "ACRD," pursuant to the Arizona Civil Rights Act, § 41-1481(A). Defendant also alleges
9 that on or about April 21, 2014, based upon its investigation, the Office of the Attorney
10 General, Civil Rights Division dismissed Plaintiff's case concluding the evidence obtained
11 did not establish any violation of statute(s) on the part of the City of Tucson. A Notice of
12 Right to Sue letter was issued to Plaintiff on April 24, 2014. Defendant affirmatively
13 alleges that Plaintiff's right to sue is limited to the allegations in the ACRD complaint and
14 applicable statutes of limitations.

15 9. Defendant admits that a formal complaint was filed with the City's Equal
16 Opportunity Programs Division (EOPD) on or about March 27, 2015, alleging wrongful
17 conduct by Capt. Langejans. Defendant affirmatively alleges that EOPD had not
18 completed the processing of that complaint at the time the Amended Complaint was
19 submitted to the Court and Plaintiff therefore failed to exhaust her City remedies prior to
20 pursuing legal action.

21 10. Defendant admits those charges contained within the ACRD complaint were timely
22 filed pursuant to the Arizona Civil Rights Act.

23 **GENERAL ALLEGATIONS**

24 11. Admits.

25 12. Admits at the time Plaintiff filed her original Complaint she was a Paramedic with
26 the Tucson Fire Department ("TFD") and alleges Plaintiff applied for and was selected for
27 the position of Fire Prevention Inspector for TFD, which was a lateral transfer from her
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1 previous rank of Paramedic. That transfer was effective August 10, 2014 through May 1,
2 2016, which is when Plaintiff was reassigned to Operations as a Paramedic

3 13. Upon information and belief, admits Plaintiff gave birth to her son on July 19, 2012,
4 and she returned to work on October 27, 2012.

5 14. Admits when Plaintiff returned to work she returned to her assignment as a Swing
6 Paramedic on "C" Shift, which means she continued to be assigned to work at different
7 stations depending on TFD's needs. Defendant also alleges that Plaintiff requested that
8 she be assigned to stations on the eastside of town, preferably Station 12, and TFD
9 assigned her to the requested stations whenever possible.

10 15. Admits that Plaintiff informed BC McDonough that she preferred to be assigned to
11 stations with private rooms and those on the east side.

12 16. Denies.

13 17. Admits there were discussions about temporarily assigning Plaintiff to Station 20.

14 18. Admits.

15 19. Upon information and belief, admits that on or about October 27, 2012, Paramedic
16 Jeff Todd told Plaintiff that he wanted to move to another station and would like to help
17 her. Defendant affirmatively alleges that under TFD's Rules of Assignment members are
18 not permitted to swap or exchange assignments or positions. Defendant further alleges that
19 Jeff Todd was moved from Station 12 for reasons unrelated to Plaintiff and not because he
20 requested to be moved.

21 20. Admits Paramedic Todd sent an email to BC Stevens asking for a transfer to Station
22 20, but Defendant denies the remaining material allegations contained in paragraph 20.

23 21. Defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the material allegations contained in paragraph 21 of Plaintiff's Second Amended
25 Complaint and, therefore, denies the same.

26 22. Admits.

1 23. Defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the material allegations contained in paragraph 23 of Plaintiff's Second Amended
3 Complaint and, therefore, denies the same.

4 24. Defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the material allegations contained in paragraph 24 of Plaintiff's Second Amended
6 Complaint and, therefore, denies the same.

7 25. Admits Paramedic Todd did not get transferred to Station 20 for legitimate business
8 reasons and denies that there were any similarly situated employees who were previously
9 granted similar transfers.

10 26. Denies that Paramedic Todd's request was granted and alleges Paramedic Todd was
11 moved from Station 12 for legitimate business reasons unrelated to Plaintiff, and not
12 because he requested to leave or opted to move to swing. Defendant is without knowledge
13 or information sufficient to form a belief as to the truth of the remaining material
14 allegations contained in paragraph 26 of Plaintiff's Second Amended Complaint and,
15 therefore, denies the same.

16 27. Admits that on or about November 9, 2012, Plaintiff submitted a request to be
17 temporarily assigned to TFD Station 12. Defendant also alleges that the reason for
18 Plaintiff's request was that Station 12 was closer to her mother, which made it easier for
19 her mother to pick up expressed milk to feed her son during her work shifts. Defendant is
20 without knowledge or information sufficient to form a belief as to the truth of the
21 remaining allegations contained in paragraph 27 of Plaintiff's Second Amended Complaint
22 and, therefore, denies the same

23 28. Defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the material allegations contained in paragraph 28 of Plaintiff's Second Amended
25 Complaint and, therefore, denies the same.

26 29. Admits that in early November 2012, DC Nied and DC Rodriguez met with
27 Plaintiff.

28

1 30. Denies.

2 31. Admits Plaintiff remained at Station 12 until after the holiday season through the
3 efforts of DC Nied and DC Rodriguez. .

4 32. Admits Plaintiff remained assigned to Station 12 through January 1, 2013, through
5 the holiday season due to the efforts of DC Nied and DC Rodriguez.

6 33. Denies.

7 34. Defendant is without knowledge or information sufficient to form a belief as to the
8 truth of the material allegations contained in paragraph 34 of Plaintiff's Second Amended
9 Complaint and, therefore, denies the same.

10 35. Defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the material allegations contained in paragraph 35 of Plaintiff's Second Amended
12 Complaint and, therefore, denies the same.

13 36. Admits on January 7, 2013, Martina Macias, Senior Equal Opportunity Specialist at
14 the City of Tucson's Office of Equal Opportunity Programs ("OEOP") conducted an intake
15 interview of Plaintiff. Defendant alleges that at that time, Plaintiff described her version of
16 what occurred with her request to be assigned to Station 12. Defendant also alleges
17 Plaintiff was not subjected to any discrimination.

18 37. Defendant denies that Ms. Macias told Plaintiff she had a valid claim. Defendant
19 alleges Ms. Macias told Plaintiff she could file a complaint with OEOP and also told her
20 she could fax the complaint in if she was unable to drop it off at their office. Plaintiff
21 chose not to file a complaint with OEOP.

22 38. Denies.

23 39. Admits on March 20, 2013, Plaintiff made repeated telephone calls to DC
24 Rodriguez and AC Fischback. Defendant denies the remaining material allegations
25 contained in paragraph 39.

26 40. Admits AC Fischback received a call from Plaintiff sometime in the early evening
27 of March 20, 2013, placed Plaintiff on hold and returned with DC Rodriguez and HR

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1 Manager Acedo. Defendant is without knowledge or information sufficient to form a belief
2 as to the truth of the remaining material allegations contained in paragraph 40 of Plaintiff's
3 Second Amended Complaint and, therefore, denies the same.

4 41. Admits Plaintiff was scheduled to work at Station 9 and that DC Rodriguez told
5 Plaintiff something to the effect that it was the only assignment open. Defendant denies the
6 remaining material allegations contained in paragraph 41 of Plaintiff's Second Amended
7 Complaint.

8 42. Admits Plaintiff and HR Manager Acedo discussed the availability of private rooms
9 for Plaintiff to express milk at Station 9. Defendant denies the remaining material
10 allegations contained in paragraph 42 of Plaintiff's Second Amended Complaint.

11 43. Admits Plaintiff explained that she pumped every 2-3 hours, including throughout
12 the night, and that she felt awakening her supervisors to leave their rooms was
13 unreasonable, that HR Manager Acedo was concerned about the extent to which she was
14 expressing milk and that Acedo was concerned about the impact on her work performance.
15 Defendant denies the remaining material allegations contained in paragraph 43 of
16 Plaintiff's Second Amended Complaint.

17 44. Admits Plaintiff made the statement "you are out of your friggin' mind" on two
18 separate telephone calls and admits DC Rodriguez and AC Fischback agreed that waking
19 up her superiors to express milk was not ideal. Defendant denies the remaining material
20 allegations contained in paragraph 44 of Plaintiff's Second Amended Complaint.

21 45. Defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the material allegations contained in paragraph 45 of Plaintiff's Second Amended
23 Complaint and, therefore, denies the same.

24 46. Admits.

25 47. Denies.

26 48. Upon information and belief, admits Plaintiff contacted C Shift Union Griever
27 Sloan Tamietti to accompany her to the meeting. Defendant alleges that under City of
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1 Tucson Administrative Directives and the International Association of Fire Fighters Local
2 479 and City of Tucson Labor Agreement there was no requirement for Sloan Tamietti to
3 be present for the meeting.

4 49. Admits DC Rodriguez told Union Griever Tamietti that he did not need to be
5 present for the meeting. Defendant alleges Union Griever Tamietti was allowed to be
6 present even though this was not a requirement due to the level of discipline being
7 contemplated.

8 50. Admits Union Griever Tamietti was allowed to be present for the meeting with
9 Plaintiff.

10 51. Admits Plaintiff was provided documentation of verbal counseling for using the
11 words “you’re out of your friggin’ mind” two times and hanging up on her superiors two
12 times during the March 20, 2013, phone calls.

13 52. Denies.

14 53. Admits.

15 54. Defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the material allegations contained in paragraph 54 of Plaintiff’s Second Amended
17 Complaint and, therefore, denies the same.

18 55. Defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the material allegations contained in paragraph 55 of Plaintiff’s Second Amended
20 Complaint and, therefore, denies the same.

21 56. Denies.

22 57. Defendant alleges AC Fischback responded that Station 12 was not on the list
23 provided by the City of Tucson’s OEOP department as a station with a locked door on the
24 private room.

25 58. Admits AC Fischback made a reference to the filing of a complaint with the City’s
26 OEOP.

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1 59. Admits AC Fischback made a reference to the filing of a complaint with the City's
2 OEOP.

3 60. Denies and alleges Plaintiff was not reassigned to a firefighter position and TFD
4 does not provide individual employees with "formal notice" of reassignments. Defendant
5 further alleges that nothing in Plaintiff's assignment violated TFD's Manual of Operations
6 and/or applicable department policies and procedures.

7 61. Defendant is without knowledge or information sufficient to form a belief as to the
8 truth of the material allegations contained in paragraph 61 of Plaintiff's Second Amended
9 Complaint and, therefore, denies the same.

10 62. Admits on or about July 19, 2013, TFD issued a new nursing room policy.
11 Defendant is without knowledge or information sufficient to form a belief as to the truth of
12 the remaining material allegations contained in paragraph 62 of Plaintiff's Second
13 Amended Complaint and, therefore, denies the same.

14 63. Defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the material allegations contained in paragraph 63 of Plaintiff's Second Amended
16 Complaint and, therefore, denies the same.

17 64. Admit that on or about July 19, 2013, JoAnn Acosta (Acedo) had a conversation
18 with Plaintiff regarding her temporary assignment to Station 6 due to her need to express
19 milk. Mrs. Acosta referenced the fact that Plaintiff's son had turned one year and based on
20 that her special/temporary assignment at Station 6 would expire unless she submitted a
21 memo requesting an extension due to an ongoing need to express milk. Defendant also
22 alleges that Plaintiff submitted a memo requesting an extension on July 27, 2013.

23 Defendant further alleges that Mrs. Acosta sent a memorandum to Plaintiff on August 30,
24 2013, recapping the conversation they had on July 19th and informing Plaintiff that the
25 department granted her an extension to remain at Station 6 for 3 months, or until October
26 18, 2013, at which time her needs would be reevaluated

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1 65. Denies and alleges DC Rodriguez and AC Fischback told Plaintiff on or about
2 March 20, 2013 that she would be temporarily assigned to Station 6 due to her need to
3 express milk. Defendant also alleges that on July 27, 2013, Plaintiff submitted a memo
4 requesting a continued assignment to Station 6 due to her need to continue expressing milk
5 for her son. Defendant further alleges on November 3, 2013, Plaintiff sent an email
6 through her chain of command stating she had a need to be at Station 6 “until [she]
7 finish[ed] nursing [her] second child.” In response to Plaintiff’s email, she was contacted
8 on November 4, 2013, for clarification about what she meant. Plaintiff stated she still had a
9 need to express milk for her first child. Plaintiff was granted an extension and told that the
10 department would check in with her in a few months (January 2014), and Plaintiff was
11 asked to bring it to the department’s attention if she no longer had a need to express milk.

12 66. Upon information and belief, admits that on July 31, 2013, Plaintiff filed a written
13 charge of discrimination with the Arizona Attorney General’s Office, Civil Rights Division
14 pursuant to the Arizona Civil Rights Act, § 41-1481(A).

15 67. Defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the material allegations contained in paragraph 67 of Plaintiff’s Second Amended
17 Complaint and, therefore, denies the same.

18 68. Admits.

19 69. Denies.

20 70. Admits that on or about May 22, 2014, Plaintiff filed a notice of claim alleging she
21 had experienced sex discrimination and retaliation since returning to work in late October
22 2012.

23 71. Upon information and belief, admits Plaintiff was assigned to light duty on June 16,
24 2014, per her request.

25 72. Admit HR Manager Acosta (Acedo) was checking in with Plaintiff periodically to
26 see if she still had the need to express milk while at work. Also, refer to response to
27 paragraph 65 above.

1 73. Denies that Captain McDonough took Plaintiff out to drill by herself and admits
2 Plaintiff submitted a memo on or about June 19, 2014, regarding a drill that took place on
3 May 22, 2014. Defendant also alleges Plaintiff received and educational counseling
4 addressing her insubordination, inappropriate conduct, and carelessness during the drill.
5 Defendant further alleges that Captain McDonough and Firefighter Tyler McKendrick also
6 submitted memorandums regarding this same drill. Defendant is without knowledge or
7 information sufficient to form a belief as to the truth of the remaining material allegations
8 contained in paragraph 73 of Plaintiff's Second Amended Complaint and, therefore, denies
9 the same.

10 74. Defendant is without knowledge or information sufficient to form a belief as to the
11 truth of the material allegations contained in paragraph 74 of Plaintiff's Second Amended
12 Complaint and, therefore, denies the same.

13 75. Admits that firefighters on light duty were required to provide a doctor's note
14 regarding their ability to engage in exercise and firefighters were expected to exercise
15 where they were assigned. Upon information and belief, admit Plaintiff was told that she
16 must start work at 7:00 a.m.

17 76. Defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the material allegations contained in paragraph 76 of Plaintiff's Second Amended
19 Complaint and, therefore, denies the same.

20 77. Denies and alleges it is standard policy that anyone assigned to light duty is
21 required to provide a doctor's note indicating the extent to which exercise is medically
22 appropriate.

23 78. Admits that TFD's telestaff records show that the change was made by payroll,
24 which would have been done based on information about Plaintiff's time at work.
25 Defendant is without knowledge or information sufficient to form a belief as to the truth of
26 the remaining material allegations contained in paragraph 78 of Plaintiff's Second
27 Amended Complaint and, therefore, denies the same.

1 79. Denies.

2 80. Denies.

3 81. Denies.

4 82. Denies.

5 83. Denies

6 84. Admits.

7 85. Defendant is without knowledge or information sufficient to form a belief as to the
8 truth of the material allegations contained in paragraph 85 of Plaintiff's Second Amended
9 Complaint and, therefore, denies the same.

10 86. Admits Plaintiff was selected for the position of Fire Prevention Inspector for TFD,
11 which was a lateral transfer from her previous rank of Paramedic..

12 87. Denies.

13 88. Denies.

14 89. Denies.

15 90. Defendant is without knowledge or information sufficient to form a belief as to the
16 truth of the material allegations contained in paragraph 90 of Plaintiff's Second Amended
17 Complaint and, therefore, denies the same.

18 91. Defendant is without knowledge or information sufficient to form a belief as to the
19 truth of the material allegations contained in paragraph 91 of Plaintiff's Second Amended
20 Complaint and, therefore, denies the same.

21 92. Defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the material allegations contained in paragraph 92 of Plaintiff's Second Amended
23 Complaint and, therefore, denies the same.

24 93. Defendant is without knowledge or information sufficient to form a belief as to the
25 truth of the material allegations contained in paragraph 93 of Plaintiff's Second Amended
26 Complaint and, therefore, denies the same.

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1 94. Defendant is without knowledge or information sufficient to form a belief as to the
2 truth of the material allegations contained in paragraph 94 of Plaintiff's Second Amended
3 Complaint and, therefore, denies the same.

4 95. Defendant is without knowledge or information sufficient to form a belief as to the
5 truth of the material allegations contained in paragraph 95 of Plaintiff's Second Amended
6 Complaint and, therefore, denies the same.

7 96. Denies.

8 97. Defendant is without knowledge or information sufficient to form a belief as to the
9 truth of the material allegations contained in paragraph 97 of Plaintiff's Second Amended
10 Complaint and, therefore, denies the same.

11 98. Denies.

12 99. Upon information and belief, admits Plaintiff was on leave from September through
13 November 2014, after the birth of her second child.

14 100. Defendant is without knowledge or information sufficient to form a belief as to the
15 truth of the material allegations contained in paragraph 100 of Plaintiff's Second Amended
16 Complaint and, therefore, denies the same.

17 101. Defendant is without knowledge or information sufficient to form a belief as to the
18 truth of the material allegations contained in paragraph 101 of Plaintiff's Second Amended
19 Complaint and, therefore, denies the same.

20 102. Upon information and belief, admits when Plaintiff returned from leave on or about
21 November 24, 2014, she began her position as a Fire Inspector in the Fire Prevention
22 Division.

23 103. Defendant is without knowledge or information sufficient to form a belief as to the
24 truth of the material allegations contained in paragraph 103 of Plaintiff's Second Amended
25 Complaint and, therefore, denies the same.

26 104. Denies Plaintiff was subjected to any actions of behaviors rising to the level of
27 intimidation and/or hostile work environment and alleges TFD addressed Plaintiff's
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1 concerns regarding Capt. Langejans in a timely and appropriate manner. Defendant denies
2 all other material allegations contained in paragraph 104 of Plaintiff's Second Amended
3 Complaint.

4 105. Admits there was a Strategic Planning Meeting on or about December 4, 2014, and
5 admits that after said meeting Capt. Langejans, Inspectors Tom Sisterman and John
6 Vincent engaged in a conversation. Defendant is without knowledge or information
7 sufficient to form a belief as to the truth of the remaining material allegations contained in
8 paragraph 105 of Plaintiff's Second Amended Complaint and, therefore, denies the same.

9 106. Defendant is without knowledge or information sufficient to form a belief as to the
10 truth of the material allegations contained in paragraph 106 of Plaintiff's Second Amended
11 Complaint and, therefore, denies the same.

12 107. Upon information and belief, admits that on December 5, 2014, Inspectors
13 Sisterman, Vincent, and December told Captain Gordon Clark, Plaintiff's husband, that
14 Capt. Langejans had made statements about Plaintiff and Gordon Clark. Further admits
15 that Gordon Clark notified his chain of command about what the inspectors had
16 communicated to him.

17 108. Alleges Plaintiff was interviewed on January 22, 2015, during TFD's internal
18 investigation into the allegations against Capt. Langejans. Upon information and belief,
19 allege before that date Plaintiff had not communicated any concerns relating to Capt.
20 Langejans to DC Mike Carsten or any other supervisory personnel. Defendant also alleges
21 that Plaintiff submitted an email on February 11, 2015, requesting that she be included in a
22 meeting AC Laura Baker had scheduled with the TFD employees who had submitted
23 memos regarding Capt. Langejans.

24 109. Admits that on January 14, 2015, Inspector John Vincent submitted a memo titled,
25 "Request for transfer within Fire Prevention Division," and admits on January 15, 2015,
26 Inspector Tom Sisterman submitted a memo titled, "Hostile Work Environment in the Fire
27 Prevention Division." Defendant alleges the contents of those memos speak for themselves
28

1 and further alleges these memos, as well as the memo submitted by Gordon Clark lead to
2 TFD's internal investigation as discussed in paragraph 108, above.

3 110. Denies and alleges TFD conducted an internal investigation into the allegations
4 contained in the memos mentioned in paragraph 109, above, and further alleges TFD's
5 investigation was thorough and Capt. Langejans' chain of command addressed the
6 situation appropriately.

7 111. Admits on January 15, 2015, DC Mike Carsten received a memo authored by
8 Gordon Clark dated January 14, 2015, which was titled "Report of Wrongful Conduct."
9 Defendant alleges the content of said memo speaks for itself and this memo did make it up
10 the chain of command to Chief Critchley. On January 16, 2015, Chief Critchley authorized
11 an internal investigation into the allegations contained in Gordon Clark's memo and the
12 memos submitted by Inspector Sisterman and Inspector Vincent as discussed in paragraphs
13 108 and 109, above.

14 112. Admits that Inspectors Sisterman and Vincent's memos made it up the chain of
15 command to Chief Critchley and that Chief Critchley authorized and internal investigation
16 into these memos and Gordon Clark's memo as discussed in paragraphs 108 through 111,
17 above.

18 113. Denies.

19 114. Admits that on February 12, 2015, AC Laura Baker and DC Carsten met with
20 Plaintiff after first meeting separately with each of the following individuals, in this order:
21 Vincent, Longo, Sisterman, Gordon Clark, and Langejans. Each person was individually
22 informed that the internal investigation was complete, to stop talking about others which
23 creates an uncomfortable environment, all will remain in the division, though some
24 uncomfortableness and tensions there is not a threat in the workplace. All were also
25 informed that each would participate in mandatory training titled "Respectful Workplace"
26 and all were offered to participate in a voluntary mediation coordinated through the City's
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1 Equal Opportunity Programs Division (“EOPD”). They were also offered assistance
2 through Employee Assistance Program (“EAP”).

3 115. Denies and alleges after the completion of the internal investigation in February
4 2015 AC Laura Baker met with Plaintiff and informed about the investigation as more
5 fully set forth in paragraph 114, above. Defendant further alleges that AC Laura Baker was
6 not aware of any alleged concerns Plaintiff had about Capt. Langejans until after Plaintiff
7 filed a wrongful conduct complaint with the City’s EOPD on or about March 25, 2015.
8 Plaintiff never filed a memorandum or any complaint relating to Capt. Langejans with AC
9 Laura Baker or anyone in the Fire Prevention Division or TFD.

10 116. Denies and alleges the same as response to paragraph 114, above, which discuss
11 what AC Laura Baker told Plaintiff and others in the Fire Prevention Division after
12 completing her investigation.

13 117. Denies.

14 118. Alleges the internal investigation into the allegations against Capt. Langejans
15 resulted in him being issued a written reprimand and the findings of any violations of City
16 Administrative Directives and/or TFD policies are noted on said written reprimand and it
17 speaks for itself.

18 119. Admits that Capt. Langejans was issued a written reprimand after TFD’s internal
19 investigation and alleges this disciplinary action was appropriate under the circumstances
20 and consistent with TFD’s discipline matrix.

21 120. Denies and alleges Plaintiff did not make complaints about Capt. Langejans, others
22 did, and TFD completed an internal investigation wherein 31 TFD Fire Prevention
23 employees were interviewed and Capt. Langejans received a written reprimand after the
24 investigation. Defendant further alleges that TFD did not retaliate against Plaintiff.

25 121. Admits Plaintiff filed a complaint with the City’s EOPD on or about March 25,
26 2015, and denies all remaining allegations contained in paragraph 121 of Plaintiff’s
27 Second Amended Complaint.

1 122. Upon information and belief, admits on or about July 29, 2015, EOPD Investigator
2 Matthew Larsen submitted an Investigative Summary to Martha Durkin, the City Manager
3 at the time, addressing his portion of the investigation into Plaintiff's EOPD complaint
4 filed on March 25, 2015. Defendant alleges EOPD Sr. Equal Opportunity Specialist,
5 Martina Macias was tasked with investigating Plaintiff's allegations of discrimination
6 and/or harassment also contained in the EOPD complaint she filed on March 25, 2015, and
7 she submitted her findings as to these allegations in a separate Memorandum contained
8 within the EOPD investigation file. Defendant also alleges that on July 29, 2015, Assistant
9 City Manager, Julianne Hughes, concurring with Martina Macias findings and directed
10 TFD to address EOPD's assertions about TFD's internal investigation and the nepotism
11 issue. On August 18, 2015, AC Laura Baker submitted a response as directed by the City
12 Manager's Office.

13 123. Admits on June 18, 2105, Martina Macias, Sr. Equal Opportunity Specialist with
14 the City's EOPD did a separate analysis of the interviews conducted during Matthew
15 Larsen's investigation and she made a finding that there was no information which
16 supported a *prima facie* case of retaliation, discrimination, or harassment. Defendant
17 alleges Investigator Matthew Larsen's findings as to his portions of the EOPD
18 investigation are contained in his Investigative Summary, and the content of said summary
19 speaks for itself.

20 124. Admits that Investigator Matthew Larsen made a finding that because Plaintiff and
21 her husband, Gordon Clark, were working in a particularly small sized division it appeared
22 there was a violation of the City's Administrative Directive regarding nepotism. Defendant
23 denies the remaining material allegations contained in paragraph 124 of Plaintiff's Second
24 Amended Complaint and alleges Plaintiff has suffered no adverse employment action.

25 125. Denies.

26 126. Upon information and belief, admits that Plaintiff's husband Gordon Clark was
27 notified that he would be reassigned to Operations effective August 22, 2015, and alleges
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1 this assignment was partly because of TFD's review of its nepotism policy, but this move
2 was already being contemplated as part of TFD's succession planning. Defendant further
3 alleges Gordon Clark was on the promotional list for Battalion Chief ("BC") prior to the
4 EOPD investigation and there had been discussions between Gordon Clark and AC Laura
5 Baker regarding him moving back to Operations before being promoted to BC.

6 127. Denies and alleges that on or about August 22, 2015, Gordon Clark was transferred
7 from his assignment as a Captain in Fire Prevention to a temporary assignment at EN#3.
8 Defendant also alleges that upon information and belief Gordon Clark may have worked
9 an alternate 4/10 schedule while in Fire Prevention. On his first shift in Operations,
10 Gordon Clark was assigned to EN#3 and continued to be scheduled at EN#3 from August
11 23, 2015 through November 13, 2015, he then bid to LD#1. Further alleges LD#1 is a
12 specialty assignment and Gordon Clark received a 5% increase in pay from November 17,
13 2015 through January 7, 2016, thereafter he was promoted to Battalion Chief. Defendant
14 further alleges that upon being notified that he was going to be reassigned to Operations,
15 Gordon Clark had the opportunity to bid to any opening to change his assignment.

16 128. Denies and alleges the nepotism policy was undergoing revisions after the EOPD
17 investigation and there were several personnel moves as a result of the EOPD investigation
18 and the direction that was given from the City Manager's Office to address any potential
19 issues of nepotism in the TFD.

20 129. Admits that when comparing the pay scale of a 40 hour a week Captain to a 56 hour
21 a week Captain, the 40 hour a week Captain make more, but alleges that the actual amount
22 earned and whether the swing shift is less desirable depends upon various factors.
23 Defendant also alleges that Gordon Clark was temporarily assigned to EN#3 and then bid
24 to LD#1 as more full set forth in paragraph 128, above.

25 130. Denies.

26 131. Denies and alleges Plaintiff has never been retaliated against.

27 Defendant denies each and every allegation that is not expressly admitted herein.

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COUNT ONE

(Sex Discrimination/Retaliation in Violation of the Fair Labor Standards Act, U.S.C. § 207(r) and § 215)

132. Defendant hereby incorporates by reference the assertions and allegations contained in paragraphs 1-131 above as though fully set forth herein.

133. Paragraph 133 is a legal conclusion and no response is necessary from Defendant.

134. Denies.

135. Denies.

136. Denies.

137. Denies.

138. Denies.

139. Denies that Defendant violated any constitutional, statutory, common law, or other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by Defendant.

COUNT TWO

(Sex Discrimination in Violation of Title VII of the Civil Rights Act of 1964, as Amended)

140. Defendant hereby incorporates by reference the assertions and allegations contained in paragraphs 1-139 above as though fully set forth herein.

141. Admits that the City of Tucson is an employer within the meaning of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, 42 U.S.C. §§ 2000e *et seq.* (Title VII).

142. Denies.

143. Denies.

1 144. Denies that Defendant violated any constitutional, statutory, common law, or other
2 right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by
3 Defendant.

4 **COUNT THREE**

5 **(Sex Discrimination/Hostile Work Environment in Violation of the**
6 **Arizona Civil Rights Act, § 41-1463(B)(1))**

7 145. Defendant hereby incorporates by reference the assertions and allegations contained
8 in paragraphs 1-144 above as though fully set forth herein.

9 146. Denies.

10 147. Paragraph 147 is a legal conclusion and no response is necessary from Defendant.

11 148. Denies.

12 149. Denies that Defendant violated any constitutional, statutory, common law, or other
13 right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by
14 Defendant.

15 **COUNT FOUR**

16 **(Retaliation in Violation of the Arizona**
17 **Civil Rights Act, A.R.S. § 41-1464(A))**

18 150. Defendant hereby incorporates by reference the assertions and allegations contained
19 in paragraphs 1-149 above as though fully set forth herein.

20 151. Paragraph 151 is a legal conclusion and no response is necessary from Defendant.

21 152. Defendant is without knowledge or information sufficient to form a belief as to the
22 truth of the material allegations contained in paragraph 152 of Plaintiff's Second Amended
23 Complaint and, therefore, denies the same.

24 153. Denies.

25 154. Denies that Defendant violated any constitutional, statutory, common law, or other
26 right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by
27 Defendant.

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COUNT FIVE

**(Retaliation in Violation of the Arizona
Civil Rights Act, A.R.S. § 41-1464(A))**

155. Defendant hereby incorporates by reference the assertions and allegations contained in paragraphs 1-154 above as though fully set forth herein.

156. Paragraph 156 is a legal conclusion and no response is necessary from Defendant.

157. Denies.

158. Denies.

159. Denies.

160. Denies that Defendant violated any constitutional, statutory, common law, or other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by Defendant.

COUNT SIX

**(Retaliation in Violation of the Arizona
Civil Rights Act, A.R.S. § 41-1464(A))**

161. Defendant hereby incorporates by reference the assertions and allegations contained in paragraphs 1-160 above as though fully set forth herein.

162. Paragraph 162 is a legal conclusion and no response is necessary from Defendant.

163. Denies.

164. Denies that Defendant violated any constitutional, statutory, common law, or other right of the Plaintiff, and alleges that the content of the City's EOPD investigation speaks for itself.

165. Denies.

166. Denies.

167. Denies that Defendant violated any constitutional, statutory, common law, or other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by Defendant.

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COUNT SEVEN

**(Retaliation in Violation of Title VII of the
Civil Rights Act of 1964, as Amended)**

168. Defendant hereby incorporates by reference the assertions and allegations contained in paragraphs 1-167 above as though fully set forth herein.

169. Paragraph 169 is a legal conclusion and no response is necessary from Defendant.

170. Denies.

171. Denies.

172. Denies.

173. Denies that Defendant violated any constitutional, statutory, common law, or other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by Defendant.

COUNT EIGHT

**(Retaliation in Violation of Title VII of the
Civil Rights Act of 1964, as Amended)**

174. Defendant hereby incorporates by reference the assertions and allegations contained in paragraphs 1-173 above as though fully set forth herein.

175. Paragraph 175 is a legal conclusion and no response is necessary from Defendant.

176. Denies.

177. Denies that Defendant violated any constitutional, statutory, common law, or other right of the Plaintiff, and alleges that the content of the City's EOPD investigation speaks for itself.

178. Denies.

179. Denies.

1 180. Denies that Defendant violated any constitutional, statutory, common law, or other
2 right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by
3 Defendant.

4 181. Defendant denies any allegation not specifically admitted in this Answer.

5 **AFFIRMATIVE DEFENSES**

6 Defendant affirmatively alleges that:

7 182. Alleges that Plaintiff's Amended Complaint fails to state a claim upon which relief
8 can be granted.

9 183. Alleges Plaintiff was not subjected to any adverse employment action.

10 184. Alleges that all employment actions taken with regard to Plaintiff were because of
11 legitimate business reasons.

12 185. Alleges Defendant exercises reasonable care in preventing and/or correcting any
13 alleged sex discrimination, and Plaintiff failed to take advantage of the corrective or
14 preventative opportunities provided to her as a City employee. Thus, Defendant is
15 protected under the *Ellerth-Faragher* defense for Plaintiff's state and federal claims.

16 *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. City of Boca Raton*,
17 524 U.S. 775 (1998).

18 186. Alleges Plaintiff Carrie Clark did not mitigate or may not have mitigated her
19 damages which may have been incurred as she alleges in her Second Amended Complaint.

20 187. Alleges that Defendant is without knowledge or information sufficient to form a
21 belief as to all the affirmative defenses that may become available as discovery progresses.
22 Therefore, Defendant asserts all the affirmative defenses available pursuant to Federal
23 Rules of Civil Procedure, Rules 8 and 12, A.R.S. § 12-820, *et seq.*, A.R.S. § 12-821, *et*
24 *seq.*, A.R.S. § 41-1463, *et seq.* and any other defenses raised by discovery, as if such
25 defenses were set forth specifically herein.

26 188. Plaintiff has failed to comply with A.R.S. §12-821.01.

1 189. Plaintiff failed to exhaust administrative remedies through either the EEOC or
2 ACRD.WHEREFORE, having fully answered Plaintiff's Second Amended Complaint,
3 Defendant requests that the Court:

4 A. Dismiss Plaintiff's Second Amended Complaint for failure to state a claim
5 for which relief may be granted;

6 B. Determine that Plaintiff take nothing by same;

7 C. Award Defendant its costs of litigation, including a reasonable attorney's
8 fee;

9 D. Grant such other and further relief as the Court deems just and proper.

10 DATED May 23, 2016.

11 MICHAEL G. RANKIN
12 City Attorney

13 By: s/Michelle Saavedra
14 Michelle Saavedra
15 Michael W. L. McCrory
Principal Assistant City Attorneys

16 I hereby certify that on May 23, 2016, I electronically transmitted the attached
17 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
18 Notice of Electronic Filing to the following CM/ECF registrants:

19 Jeffrey H. Jacobson
20 JACOBSON LAW FIRM
21 2730 East Broadway Blvd., Suite 160
Tucson, AZ 85716
Attorney for Plaintiff

22 By E. Ramirez
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